IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 9135 of 2005

Between:

K.Satyabama, w/o Krishna,
R/o Mothugudem, Lower Seeleru Project, Khammam District.

..... PETITIONER

AND

1 The Superintendent Engineer, Operation & Maintenance, Mothugudem, APGENCO, Khammam District.
2 The APGENCO rep., by its General Manager (HR) Vidyutsoudha, Hyderabad.
3 The APGENCO, rep., by its Chairman & Managing Director, Vidyutsoudha, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents in rejecting the case of the petitioner for absorption as per B.P.Ms.No.37, dt.18-5-1997 and B.P.Ms.No.272, dt.31-12-1997 vide letter No.SE/O&M/LS/Adm./C2/1648-18/2000 dt.21-10-2000 as highly illegal, arbitrary and violative of Art.14 & 16 of the Constitution of India and consequently direct the respondents to absorb the petitioner in the APGENCO service.

Counsel for the Petitioner:MR.N.M.KRISHNAIAH

Counsel for the Respondent Nos.1 to 3: SMT. E.URMILA

The Court at the admission stage made the following Order:

The petitioner in this writ petition claims to have been engaged as contract labourer by the Andhra Power Generation Corporation (for short' APGENCO') in their Power Plant. The Government of Andhra Pradesh, in exercise of its powers under Section 10 of the Contract Labour (Regulation of Abolition) Act, 1970 has prohibited as many as 33 categories of employment for being undertaken through the labour contract by G.O.Ms. No.41 dated 23.09.1996. The said G.O., also states that the orders for absorption of workers, if any, will be issued by the Energy Department.

In pursuance of the orders issued in the said G.O., the Andhra Pradesh State Electricity Board (for short 'the Board') issued B.P.Ms.No.36 and 37 dated 18.05.1997, providing opportunity of appointment on regular basis to the contract labourers engaged in 33 categories referred to in the said G.O. The said B.P.Ms. issued by the Board also provided *inter alia* that the cases of contract labourers working against the 33 abolished categories of Generating Stations shall be considered for appointment on regular basis through the process of selection against new posts in each of the Generating Stations. This was followed by another order in B.P.Ms.No.57, dated 20.05.1998, in a way supplementing the order in B.P.Ms.No.37, by supplying a further set of objective criteria. For example, in para – 6 of the said B.P.Ms., it is stated as under;

> "The Contract Labour engaged against any of the 33 abolished categories and on rolls as on 23.09.1996 and having qualifications of SSC/SSLC + I.T.I. or higher + I.T.I. or Vocational Course in Electrical Trade at intermediate level are eligible for absorption."

In the light of the said two B.P.Ms. the petitioner claims that her case is covered by those orders.

A general question thus arose as to whether the claim of several persons, who claimed to have fulfilled those conditions were not considered for providing employment. This court through order dated 18.11.1999, disposed of W.P.No. 5064 of 1999 and Batch, directing consideration of cases of various contract labourers for appointment on regular basis in accordance with the conditions contained in the Board proceedings issued from time to time. It is in this context that the case of the petitioner has been considered by the respondents and were rejected on the ground that his case was not covered by the conditions contained in various orders.

The learned counsel for the petitioners submit that the service certificates issued to the petitioner clearly demonstrate that they are covered by para-6 of B.P.Ms.No.57, dated 20.05.1998. However, the fact remains that the service certificates so issued are by the contractor, who engaged them as laborers, but not by the Generating Stations as such. It is an indisputable finding that when the petitioner has complied with the conditions, he can claim the employment under the said orders as a matter of right. However, this Court cannot record a finding as to whether or not the petitioner has been employed in any of the 33 categories of prohibited employment and that he possessed the requisite qualifications or that he was in employment as on the crucial dated. However, it is made clear that the petitioner cannot be denied the relief sought for on the ground that the facts need to be further verified.

The Apex Court in STEEL AUTHORITY OF INDIA LIMITED V. NATIONAL WATER FRONT WORKERS,held that where such disputed questions of fact existed, the only course open to the aggrieved persons is to get adjudication through the forum constituted under the Industrial Disputes Act.

Accordingly, the writ petition is disposed of permitting the petitioner to raise an industrial dispute as regards their entitlement to get appointed under the various orders issued by the Government and the ‘the Board’ as referred to above. On such a dispute being raised by the petitioner before the competent Labour Court, the concerned Labour Court shall endeavour to dispose of the same as early as possible. There shall be no order as to costs.

(K.C.BHANU,J)

Dt:25th April, 2005

usd

To

1 The Superintendent Engineer, Operation & Maintenance, Mothugudem, APGENCO, Khammam District.
2 The APGENCO rep., by its General Manager (HR) Vidyutsoudha, Hyderabad.
3 The APGENCO, rep., by its Chairman & Managing Director, Vidyutsoudha, Hyderabad.

4 Two CD copies.